

**FILED**

MAY 15 2006

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA

**BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER ) No. 03-1592  
OF THE STATE BAR OF ARIZONA, )

SARA JANE ODNEAL, )  
Bar No. 009230 )

RESPONDENT. )

**HEARING OFFICER'S REPORT**

**PROCEDURAL HISTORY**

A Probable Cause Order was filed on April 12, 2004. A Complaint was filed on August 25, 2005. Respondent filed an Answer on September 26, 2005. The Settlement Officer held a settlement conference on November 14, 2005, at which time the parties were able to reach an agreement. The parties filed a Tender of Admissions and Agreement for Discipline by Consent (Tender) and Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent (Joint Memo) on December 8, 2005. On January 11, 2006, this Hearing Officer filed a Request for Modification of Agreement. The parties then filed a Notice of Intent to File Amended Discipline by Consent Documents. Subsequently the parties filed a Modified Tender of Admissions and Agreement for Discipline by Consent (Modified Tender) and Modified

1 Joint Memorandum in Support of Tender of Admissions and Agreement for  
2 Discipline by Consent (Modified Joint Memo) on February 10, 2006.

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4 **FINDINGS OF FACT**

5 1. Respondent was admitted to practice law in Arizona on October 15, 1983.

6 2. In Supreme Court NO. SB-02-0085-D, Respondent was suspended for 90  
7 days, effective August 2, 2002. She was reinstated November 18, 2002.

8 3. Beginning in 2000, Respondent represented the wife in a divorce  
9 proceeding in Pinal County Superior Court.

10 4. On February 25, 2002, Pinal County Superior Court Judge Gilberto V.  
11 Figueroa granted the parties' divorce and ordered Respondent to prepare the  
12 final decree. Respondent volunteered to prepare the necessary qualified  
13 domestic relations orders (QDROs).

14 5. On July 1, 2002, John Wasley, the attorney for the husband, filed a  
15 motion for sanctions against Respondent and her client because, in part,  
16 Respondent had not prepared the decree or QDROs.

17 6. On July 29, 2002, the court held a hearing on the motion. The judge found  
18 Respondent and her client jointly liable for the husband's attorney's fees and  
19 ordered them to pay Wasley \$350 in sanctions within 180 days from the date of  
20 the order.

21 7. Respondent timely sent Wasley and the judge letters advising of her  
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1 impending suspension. On or about August 2, 2002, Respondent filed a motion  
2 to withdraw as counsel for the wife. There is no indication the judge granted the  
3 motion.  
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5 8. On August 2, 2002, Respondent began her 90-day suspension imposed in  
6 Supreme Court NO. SB-02-0085-D. She was reinstated on November 18, 2002.  
7 She did not file a notice of appearance advising the court that she was again  
8 representing the wife.  
9

10 9. By letter dated February 5, 2003, Wasley advised Respondent that she had  
11 failed to pay the \$350 and that she thus was in violation of the July 29, 2003,  
12 court order to pay within 180 days. He further warned her that if she did not pay  
13 the money, he would ask the court for additional sanctions. She did not respond  
14 to this letter.  
15

16 10. If this matter were to proceed to hearing, Respondent would testify that  
17 she had previously sent Mr. Wasley a check for the amount ordered. Moreover,  
18 she states that she would produce banking records showing her stop payment  
19 order to the bank and a copy of the check she submitted to Mr. Wasley and  
20 submission of a second check to Mr. Wasley after notification that Mr. Wasley  
21 did not receive the first check.  
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24 11. On April 28, 2003, Wasley filed a petition for order to show cause  
25 alleging that neither Respondent nor her client had paid the \$350 in attorney's

1 fees and Respondent was being uncommunicative and dilatory. In addition, he  
2 alleged that she had not prepared appropriate QDROs as the court had  
3 previously ordered.  
4

5 12. The court issued an order to show cause for June 2, 2003. Respondent  
6 was personally served with the order to show cause on or about May 2, 2003.  
7 The wife was not served. The court also sent a minute entry dated May 5, 2003,  
8 to Respondent and Wasley setting the June 2, 2003, hearing.  
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10 13. Neither Respondent nor her client, the wife, appeared at that June 2,  
11 2003, hearing. Respondent asserts that she appeared in the judge's office  
12 approximately 20 minutes late due to construction delays on the highway  
13 between Phoenix and the Court in Pinal County.  
14

15 14. At the June 2, 2003, hearing, Wasley advised the judge that Respondent  
16 had, finally -- after he filed the OSC request -- sent him a check for \$350 via  
17 letter dated May 13, 2003, although she claimed in her transmittal letter that she  
18 had sent him a check on January 8, 2003. As for the QDROs, he had received,  
19 just that morning, copies of the three QDROs prepared by Respondent and  
20 lodged with the court on May 30, 2003, and June 2, 2003. These QDROs were  
21 supposed to have been prepared months before.  
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24 15. Respondent had prepared the QDROs and submitted them to the  
25 appropriate program administrators, ASARCO and British Petroleum, in July

1 2002.

2 16. After lodging the QDROs, Mr. Wasley did not file or assert an objection  
3 to the form of the QDROs.  
4

5 17. As the result of the June 2, 2003, hearing, the judge granted Wasley  
6 additional attorney's fees and ordered that Wasley retain the services of another  
7 attorney to prepared the QDROs.  
8

9 18. On the QDROs she lodged with the court dated May 30, 2003, and June  
10 2, 2003, Respondent identified herself as the wife's counsel.

11 19. On June 27, 2003, Respondent filed a motion for rehearing and request  
12 for stay. She alleged that the wife never had been personally served with the  
13 OSC and that she had advised the wife that, as a result, she (the wife) did not  
14 need to attend the June 2, 2003, hearing. Respondent also claimed that she was  
15 not counsel of record on May 2, 2003 – the date *she* was served with the OSC –  
16 so she could not accept service for the wife. Respondent further asserted that she  
17 was 20 minutes late for the hearing because of construction delays on the  
18 freeway, but she could not find a telephone between her office in Mesa and the  
19 courthouse in Florence to advise the judge of her delay, and the court had only  
20 waited five minutes for her. She further asserted that she had complied with  
21 “*all*” (italics and bold in her motion) previous court orders, including paying the  
22 \$350 in sanctions “in a timely manner” and preparing the QDROs.  
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1       20. In opposition, Wasley asserted that she did not issue him a check until  
2 *after* he filed the OSC petition. In addition, he noted that the QDROs were not  
3 lodged until May 29, 2003, and June 2, 2003, and, he contended, still were  
4 inaccurate and incomplete. He also contested her claim that she had properly  
5 withdrawn from representing the wife in August 2002.  
6

7       21. Based on Respondent's motion for rehearing and Wasley's objection,  
8 Judge Figueroa set another hearing for July 28, 2003. Once again, neither  
9 Respondent nor her client appeared in court. Judge Figueroa determined that  
10 Respondent had received notice based on Wasley's representation that he had  
11 sent notice of the hearing to Respondent. The judge awarded Wasley's client  
12 \$1,000 in attorney's fees and \$211 in costs, jointly against Respondent and her  
13 client.  
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16       22. If this matter were to go to hearing, Respondent would testify that she  
17 did not receive notice of the date of the hearing and that the hearing was based  
18 on her request for a hearing and there is no record of any notice of the hearing  
19 being issued by the court.  
20

21       23. On January 26, 2004, the court granted judgment jointly and severally  
22 against Respondent and her client for attorney's fees of \$1,750 and \$211, for a  
23 total judgment of \$1,961, for the period of June 1, 2003, through December  
24 2003. In addition, he ordered that Respondent and/or her client pay \$500 per  
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1 month until the sanctions were paid, or until the retirement plans paid dividends.

2 24. In a motion filed March 23, 2004, Wasley sought additional sanctions  
3 against Respondent and her client for failing to comply with the court's January  
4 26, 2004, order and a subsequent order entered March 10, 2004. Neither  
5 Respondent nor her client had, by that time, made any payments toward the  
6 \$1,961 in sanctions.  
7

8 25. At a May 25, 2004 hearing, Wasley advised that he had received only  
9 one \$500 payment toward the sanctions. Judge Figueroa directed Respondent  
10 and/or her client to make full payment of the sanctions directly to the court by 5  
11 p.m. May 25, 2004, or prepare to be taken into custody.  
12

13 26. By minute entry dated May 25, 2004, the court acknowledged that  
14 Respondent had appeared and paid all outstanding sanctions.  
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16 27. If this matter proceeded to a hearing, Respondent would take the  
17 position that she had timely paid Wasley the original \$350 in sanctions by  
18 sending him a check in January 2003. She further would take the position that  
19 she was unexpectedly late for the June 2, 2003, hearing but could not find a  
20 telephone to contact Judge Figueroa, and that she appeared in Judge Figueroa's  
21 office and was told to file a motion for reconsideration. She further would take  
22 the position that she never received notice from Wasley of the July 29, 2003,  
23 court hearing. She further would contend that she timely prepared and filed the  
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1 QDROs with the court and that any delay was due to the husband's employer.

2 28. If this matter proceeded to a hearing, the State Bar would take the  
3 position that Respondent did not comply with the court's July 29, 2002, order  
4 until after Wasley filed a petition for order to show cause in April 2003. The  
5 State Bar also would take the position that Respondent made a misrepresentation  
6 in her motion for rehearing when she stated that she had complied with "*all*"  
7 (italics and bold in her motion) previous court orders, including paying the \$350  
8 in sanctions "in a timely manner" and preparing the QDROs. The State Bar  
9 would further contend that Respondent failed to timely file the QDROs and pay  
10 the imposed sanctions, and also engaged in conduct prejudicial to the  
11 administration of justice by claiming she did not represent the wife but filed  
12 documents in which she claimed she was the wife's counsel, without filing a  
13 notice of appearance.  
14

15 29. On August 25, 2005, the State Bar filed a formal complaint against  
16 Respondent alleging violations of ERs 3.1, 3.2, 3.3(a)(1), 3.4(c) and 8.4(d), Rule  
17 42, Ariz.R.S.Ct.; former Rule 51(e) and (k) (in effect prior to December 1, 2003,  
18 for conduct occurring prior to that date); and current Rule 53(c), Ariz.R.S.Ct.,  
19 (for conduct occurring after December 1, 2003).  
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## CONDITIONAL ADMISSIONS & DISMISSALS

Respondent conditionally admits that her conduct in failing to timely comply with the court orders, failing to attend two court hearings and failing to properly appear for the client involved in domestic-relations case violated ER 8.4(d), which prohibits conduct prejudicial to the administration of justice.

The State Bar conditionally admits that it cannot prove by clear and convincing evidence the violations of ERs 3.1, 3.2, 3.3(a)(1) and 3.4(c), former Rule 51(e) and (k) and current Rule 53(c) as alleged in the complaint.

## ABA STANDARDS

The ABA *Standards* list the following factors to consider in imposing the appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by the lawyer's misconduct, and (4) the existence of aggravating or mitigating circumstances. ABA *Standard* 3.0.

The parties indicated that *Standard* 6.0 (Violations of Duties Owed to the Legal System) is the most applicable in this matter. A review of ABA *Standard* 6.2 (Abuse of the Legal Process) indicates that censure is the presumptive sanction for Respondent's misconduct. *Standard* 6.23 specifically provides:

Reprimand [censure in Arizona] is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

1 Respondent violated her duties to the legal system by failing to comply  
2 with court orders in representing a client. In addition, she failed to comply with  
3 court rules regarding appearing for a client.  
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5 Respondent was negligent in failing to comply with the court orders issued  
6 in this case and with the Court's rules. As she has conditionally admitted, she  
7 failed to timely pay the court-ordered sanctions, failed to attend two court  
8 hearings and failed to properly appear for the client in the underlying domestic-  
9 relations action.  
10

11 Respondent's failure to comply with the court orders, including her failure  
12 to attend court hearings, necessitated at least two additional hearing and orders  
13 imposing sanctions on her and her client.  
14

#### 15 **AGGRAVATING AND MITIGATING FACTORS**

16 This Hearing Officer then considered aggravating and mitigating factors in  
17 this case, pursuant to *Standards* 9.22 and 9.32, respectively.  
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19 This Hearing Officer agrees with the parties that there are two applicable  
20 aggravating factors in this matter:  
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1 (a) prior disciplinary offenses;<sup>1</sup> and,

2 (i) substantial experience in the practice of law.<sup>2</sup>

3 This Hearing Officer agrees with the parties that two factors are present in  
4 mitigation:

5 (b) absence of a dishonest or selfish motive; and,

6 (k) imposition of other penalties or sanctions;<sup>3</sup>

### 7 PROPORTIONALITY REVIEW

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9 To have an effective system of professional sanctions, there must be  
10 internal consistency, and it is appropriate to examine sanctions imposed in cases  
11 that are factually similar. *Peasley, supra*, 208 Ariz. at 33, 90 P.3d at 772.  
12 However, the discipline in each case must be tailored to the individual case, as  
13 neither perfection nor absolute uniformity can be achieved. *Id.* 208 Ariz. at 61,  
14 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In*  
15 *re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).  
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21 <sup>1</sup> Respondent received a censure and one year of probation (EEP) and was ordered to pay  
22 costs in 2001 (SB 01-0108-D) for her conduct in three cases for violating ERs 1.3, 1.15, 1.16,  
23 4.4 and 8.1 and Rules 43, 44 and 51(h) and (i). Respondent was suspended for 90 days and  
24 received a two-year term of probation (LOMAP) and ordered to pay costs in 2002 (Supreme  
25 Court NO. SB-02-0085-D), for her conduct in three files for violating ERs 1.4, 1.15, 1.16(d),  
8.1(a), 8.1(b) and 8.4(c) and Rules 51(h) and (i). Respondent was placed on probation in July  
of 2003 for one year in State Bar file NO. 03-0403 (2003) for violations of ERs 1.3 and 3.1.

<sup>2</sup> Respondent was admitted October 15, 1983.

<sup>3</sup> Respondent was ordered by the court to pay, and did pay, significant monetary sanctions. It is  
difficult to practice law in a solo practice and in this case, Respondent is a single mother who  
paid significant personal funds as sanctions.

1        Lawyers who have negligently violated court orders have generally  
2 received censures. *In re Brown*, 184 Ariz. 480, 483, 910 P.2d 631, 634 (1996).  
3  
4        “However, more severe sanctions are appropriate where a lawyer violates the  
5 terms of a prior disciplinary order or engages in further acts of the same or similar  
6 misconduct for which he or she has already been reprimanded.” *Id.* at 484, 910  
7 P.2d at 635. In *Brown*, the lawyer was suspended for nine months for conduct for  
8 which he previously had been censured or informally reprimanded on four prior  
9 occasions, and for failing to obey a prior disciplinary order. The conduct for  
10 which he was suspended in this case occurred while he was on probation resulting  
11 from prior disciplinary cases.  
12

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14        In *In re Stevens*, 178 Ariz. 261, 872 P.2d 665 (1994), the lawyer was  
15 censured for appearing in court while summarily suspended for failing to submit  
16 MCLE affidavit. In *In re Ames*, 171 Ariz. 125, 829 P.2d 315 (1992), the  
17 respondent was censured and ordered to pay restitution for, in part, failing to  
18 comply with a judge’s specific schedule for responding to pleadings,  
19 supplementing discovery and filing lists of witnesses and exhibits. In *In re La*  
20 *Paglia*, 173 Ariz. 379, 843 P.2d 1271 (1992), the respondent was censured for  
21 failing to attend a meeting of creditors and failing to timely file the statement of  
22 affairs and schedules of income and expenses, as well as other violations.  
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## RECOMMENDATION

The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public, the profession and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

In imposing discipline, it is appropriate to consider the facts of each case, the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer recommends acceptance of the Tender of Admissions and Agreement for Discipline by Consent and the Joint Memorandum in Support of Agreement for Discipline by Consent which provides for the following:

1. Respondent shall be suspended for a period of thirty days.
2. Respondent will be placed on probation for a period of two years effective upon the signing of both probation contracts. The State Bar will notify

1 the Disciplinary Clerk of the exact date of commencement of probation. The  
2 terms of probation are as follows:

3 a. Respondent shall obtain a practice monitor.

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5 b. Respondent shall submit to an assessment by the State Bar's Member  
6 Assistance Program (MAP). If the MAP director recommends that she enter into a  
7 MAP contract, Respondent shall do so, under the terms recommended by the  
8 MAP director.

9  
10 c. Respondent shall participate in the Law Office Management  
11 Assistance Program (LOMAP). Respondent must undergo a LOMAP audit and  
12 enter into a LOMAP contract.

13  
14 d. Respondent shall be responsible for all costs to participate in MAP  
15 and LOMAP; however, she shall be credited \$187.50 toward the cost of the  
16 LOMAP assessment.

17  
18 e. In the event that Respondent fails to comply with any of the  
19 foregoing conditions, and the State Bar receives information, bar counsel shall  
20 file with the Hearing Officer a Notice of Non-Compliance, pursuant to Rule  
21 60(a)5, Ariz. R. S. Ct. The Hearing Officer shall conduct a hearing within thirty  
22 days after receipt of said notice, to determine whether the terms of probation have  
23 been violated and if an additional sanction should be imposed. In the event there is  
24 an allegation that any of these terms have been violated, the burden of proof shall be  
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1 on the State Bar of Arizona to prove non-compliance by clear and convincing  
2 evidence.

3 3. Respondent shall pay the costs and expenses incurred in this  
4 disciplinary proceeding.  
5

6 DATED this 15<sup>th</sup> day of May, 2006.

7  
8 Martin Lieberman/es

9 Martin Lieberman  
Hearing Officer 7W

10 Original filed with the Disciplinary Clerk  
11 this 15<sup>th</sup> day of May, 2006.

12 Copy of the foregoing was mailed  
13 this 15<sup>th</sup> day of May, 2006, to:

14 Ralph Adams  
15 Respondent's Counsel  
16 714 North 3<sup>rd</sup> Street, Suite 7  
Phoenix, AZ 85004

17 Patricia A. Sallen  
18 Senior Bar Counsel  
19 State Bar of Arizona  
20 4201 North 24<sup>th</sup> Street, Suite 200  
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21 by: Christina Soto  
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23  
24  
25